IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

-

C.A. No.7297/2006 and C.A. No.7742/2006 in W.P. No.1529/2003

Office Notes, Office Memoranda of Coram, : Appearances, Court's orders or directions : Court's or Judge's orders and Registrar's orders.

Mr. Uday Dastane, Advocate for the Petitioners.
Mr. A.G. Mujumdar, AGP for R. Nos.1 & 2.
Mrs. T.D. Khade, Advocate for R. No. 3.
Mr. G.C. Singh, Advocate R. No.4.

.....

CORAM : K. J. ROHEE & C. L. PANGARKAR, JJ
DATED : DECEMBER 22, 2006

1. Heard counsel for the parties.

2. The dispute is between the petitioners who are the students of the institute which is respondent no.4. The dispute relates to the fee structure.

3. On 1.2.2002 the State/respondent no.1 issued a Notification prescribing Rules for Admission to Health Sciences Course for Academic Session 2002-2003 under the University/respondent no.3 and procedure for admission and conduct of Common Entrance Test namely MH-CET-2002. Accordingly Common Entrance Test was held on 25.4.2002, the results were declared on 20.5.2002 and the selection process started in June-2002. As many as four rounds of selection were held. The petitioners were admitted in third round of selection held in December-2002.

4. Before the petitioners were admitted in respondent no.4-Institute, the Supreme Court rendered its judgment in **T.M.A. Pai Foundation .v. State of Karnataka (2002) 8 SCC 481** on 31.10.2002. On the basis of the said judgment respondent no.4-Institute issued Demand Note to the petitioners calling upon them to pay fees over and above the fees prescribed by the Notification dated 1.2.2002. The said Demand Note has been challenged by the petitioners. By order dated 13.10.2003, this Court directed the petitioners to make payment of fees as demanded by Respondent No.4-Institute and as approved by Respondent No. 2/DMER subject to the final decision of the writ petition.

5. Respondent No.4-Institute moved several applications for review/ modification/ recalling of the order dated 13.10.2003. Some of them were withdrawn unconditionally and these two applications have been pressed.

6. It was vehemently urged by Mr. Singh, the learned counsel for Respondent No.4-Institute, that the judgment in T.M.A. Pai Foundation case has overruled the earlier judgment in Unni Krishnan's case. As such anything done in pursuance of the direction in Unni Krishnan's case does not survive after 31.10.2002. Since the petitioners were admitted to Respondent No.4-Institute after 31.10.2002, they would be governed by the directions in T.M.A. Pai

Foundation's case and they are obliged to pay additional fees. Mr. Singh submitted that the petitioners have not paid fees during 2003-2004, 2004-2005 and 2005-2006. Mr. Singh pointed out that in the absence of fees it is difficult to run Respondent No.4- Institute. Hence, it is necessary to direct the petitioners to pay fees as demanded by respondent no.4- Institute by reviewing/modifying/recalling the order dated 13.10.2003. Mr. Singh also referred to the order dated 21.4.2005 passed at Bombay in W. P. No. 537/2005.

7. Mr. Dastane, the learned counsel for the petitioners, on the other hand strongly opposed the submissions made on behalf of respondent no.4- Institute. In the first instance he submitted that the present applications for review/modification/recalling of the order dated 13.10.2003 are not tenable at all because the previous applications claiming the same relief were withdrawn without seeking liberty to file fresh applications. Mr. Dastane referred to para No.9 in **AIR 1987 SC 88 (Sarguja Transport Service .vs. S.T.A. Tribunal, Gwalior)** and submitted that on the same analogy the applications for interim relief would also be not maintainable.

8. On merits of the applications, Mr. Dastane submitted that the judgment in T. M. A. Pai Foundation case would not operate retrospectively so as to deprive the petitioners of the rights acquired by

them under the notification dated 1.2.2002. Mr. Dastane further submitted that the fees prescribed by notification dated 1.2.2002 is applicable to the entire batch of students who were admitted during the academic year 2002 which commenced on 1.7.2002. There cannot be any discrimination between the students admitted before 31.10.2002 and those who are admitted after 31.10.2002 because all of them belonged to same batch.

9. Lastly Mr. Dastane pointed out that respondent no.4 instituted W.P. No. 4429/2004 against the students in which interim relief was sought. This Court by order dated 5.7.2005 issued Rule and directed that W. P. No. 4429/2004 should be heard along with W. P.No. 1529/2003 and W. P. No. 2420/2003. So far as the interim relief is concerned, it was directed by this Court that the order passed in W. P. No. 537/2005 at Bombay would hold the field. In view of this order, there is no question of review/ modification/ recalling of the order dated 13.10.2003.

10. We have carefully considered the rival submissions. We have also gone through various judgments of the Apex Court in respect of fees structure of Medical Institutes. As observed by this Court in the order dated 5.7.2005, the interim order passed in W. P. No. 537/2005 has taken into consideration all aspects involved in the matter and as such the order would hold the field during the pendency of the writ petitions seeking similar reliefs.

We feel that it would not be appropriate for us to deviate from the observations in the order dated 5.7.2005. We are, therefore, not inclined to review/modify/recall the order dated 13.10.2003.

11. It was alternatively submitted by Mr. Singh , the learned counsel for respondent no.4- Institute that the petitioners may be directed to deposit the fees claimed by the Institute either in the Institute itself or in the Court within certain time limit and in case of their failure to do so, their results should be withheld. This suggestion is not at all acceptable to us as it may adversely affect the academic career of the petitioners. Hence the suggestion is rejected.

12. In the result, Civil Applications No. 7297/2006 and 7742/2006 are dismissed.

JUDGE **JUDGE**

halwai.